

# Agenda Item Form

Agenda Date: April 20, 2004

Districts Affected: N/A

Dept. Head/Contact Information: Irene Ramirez, P.E. - 541-4431

## Type of Agenda Item:

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Resolution            | <input type="checkbox"/> Staffing Table Changes              | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements       | <input type="checkbox"/> Tax Refunds                         | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer                     | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use     | <input type="checkbox"/> Bldg. Permits/Inspection            | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements            | <input checked="" type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input type="checkbox"/> Other _____                      |  |  |

## Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: \_\_\_\_\_ Months)
- ☒ Other Source: As needed on a per project basis

## Legal:

- ☒ Legal Review Required      Attorney Assigned (please scroll down): None      ☒ Approved      ☐ Denied

Timeline Priority:    ☐ High      ☒ Medium      ☐ Low      # of days: 7

## Why is this item necessary:

The Consultant shall provide studies and reports; preparation of construction documents; review of constructibility, biddability, operability and value engineering; full time project representative; review of construction submittal; and conducts meetings and conferences. Furthermore, the Consultant shall provide community involvement consists of initiating, coordinating public meetings, informing property owners in writing of encroachments and construction; and other civil engineering functions as may be required by the Owner.

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

The consultant fee includes costs for civil engineering consulting services.

## Statutory or Citizen Concerns:

None

## Departmental Concerns:

None


## ENGINEERING DEPARTMENT

*Excellence through Teamwork*

CITY OF EL PASO

2004 APR 16 PM 8 38

TO: Mayor Joe Wardy  
and City Representatives

FROM: Irene Ramirez, P.E.   
Interim City Engineer

DATE: April 14, 2004

SUBJECT: City Council Agenda

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COUNCIL AGENDA DATE: April 20, 2004

AGENDA ITEM NO.: \_\_\_\_\_

The following item has been reviewed and we recommend approval.

RESOLUTION: District #: N/A

That the Mayor be authorized to sign an Agreement for Engineering Services by and between the CITY OF EL PASO and KIMLEY-HORN AND ASSOCIATES, Inc. for a two (2) years period for an amount not to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 (\$1,500,000.00) (Citywide).

FUNDING: As needed on a per project basis

### EXPLANATION:

The Consultant shall provide studies and reports; preparation of construction documents; review of constructibility, biddability, operability and value engineering; full time project representative; review of construction submittal; and conducts meetings and conferences. Furthermore, the Consultant shall provide community involvement consists of initiating, coordinating public meetings, informing property owners in writing of encroachments and construction; and other civil engineering functions as may be required by the Owner.

cc: Jim A. Martinez, Chief Admin. Officer  
Liza A. Elizondo, City Attorney  
Adrian Ocegueda, Executive Assistant to the Mayor  
Raymond L. Telles, Assistant City Attorney  
Patricia D. Adauto, Deputy CAO for Building and Planning Services  
Irene Ramirez, Assistant City Engineer

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement for Engineering Services by and between the CITY OF EL PASO and KIMLEY-HORN AND ASSOCIATES, INC., for a two (2) year period for an amount not to exceed ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000.00). (Citywide)

**ADOPTED THIS 20<sup>TH</sup> DAY OF APRIL 2004.**

THE CITY OF EL PASO

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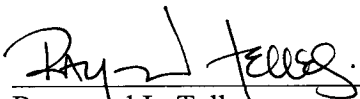
Joe Wardy, Mayor

ATTEST:

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Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



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Raymond L. Telles  
Assistant City Attorney

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)

)

# AN AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made this **20<sup>th</sup> day of April, 2004** by and between **THE CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called the **“Owner,”** and **Kimley-Horn and Associates, Inc.**, a North Carolina Corporation, hereinafter called the **“Engineer.”**

**WHEREAS**, the Owner intends to engage the Engineer to perform civil engineering services, from time to time on an as-needed basis, in connection with projects designed by the Owner in-house, designed by Consultants hired by the Owner or other projects as necessary;

**NOW, THEREFORE**, the Owner and Engineer for the consideration hereinafter set forth agree as follows:

## I. BASIC SERVICES OF THE ENGINEER

### A. General

1. The Engineer agrees to perform professional civil engineering services as hereinafter stated in Attachment "A," which is attached hereto and made a part hereof for all purposes, to the full satisfaction of the Owner on an "as needed" basis, as requested and when requested by the Owner, at Owner's sole discretion.
2. The Engineer shall serve as the Owner's professional representative and shall give consultation and advice to the Owner during the performance of services required pursuant to this Agreement.
3. The Owner is relying upon the skill and expert knowledge of the Engineer to furnish the Owner with an accurate product. The Owner's review of any documents prepared by the Engineer is only general in nature, and the Owner's obligation to approve and accept the work in no way relieves the Engineer of responsibility for any specific deficiencies in the Engineer's work product. Owner's approval and/or acceptance of any project shall in no way relieve the Engineer of the Engineer's responsibility to insure no deficiencies in any projects overseen by the Engineer.

### B. Work Products/Standards

All work prepared by the Engineer, following the Owner's written authorization to proceed for each individual project, shall:

1. Be delivered as electronic digital data contained on electronic media and in a CAD format approved by the Owner.
2. Include a hard copy consisting of original field books and drawings, to specified scale, and all other project documents.

3. Upon completion of all work with respect to each individual project, the Engineer shall prepare and deliver to the Owner the number of documents negotiated for that project.

## II. **ADDITIONAL SERVICES OF THE ENGINEER**

### A. **General**

If authorized in writing by the Owner, the Engineer shall perform or obtain additional services of the following types which are not covered by Section I herein, which shall be paid for by the Owner as indicated in Section V, herein:

1. Provide additional services due to significant changes in the general scope of the Project.
2. Revise previously approved designs except when said revisions are required as a result of errors, negligence, or other fault on the part of the Engineer.
3. Furnish additional copies of the Design Documents/Reports in excess of those required in Section I hereof.
4. Serve as an expert witness for the Owner in any litigation or other proceeding involving any assigned projects.
5. Provide additional services in connection with the project not otherwise provided for this Agreement except where those services are required as a result of negligence or other fault on the part of the Engineer.

## III. **THE OWNER'S RESPONSIBILITIES**

The Owner shall:

- A. Provide available information as to its requirements in connection with each Project request.
- B. Make known all information pertaining to a Project request, including previous reports and other data relative to cost estimate.
- C. Obtain access to and make provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform work under this Agreement.
- D. Review Design Documents/Reports prepared by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of the Engineer.
- E. Designate the City Engineer of the City of El Paso as the Owner's representative with respect to the Engineering Services to be performed under this Agreement. The City

Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to materials, equipment, elements and systems pertinent to the work covered by this Agreement.

F. Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in connection with a Project request.

G. Furnish or direct the Engineer to provide at the Owner's expense necessary additional services as stipulated in Section II of this Agreement or other services as required by the Owner.

#### **IV. PERIOD OF AGREEMENT AND SERVICES**

A. This Agreement comes into effect and full force, and is legally binding, on the date noted above. This Agreement shall remain in full force for a period of **two (2) years** from the effective date of this Agreement for Engineering Services. If the Engineer is engaged in providing engineering services at the time of the termination of this Agreement, the Agreement shall be extended for a reasonable period of time to ensure the completion of the current assignment. Engineering services provided by the Engineer in the completion of such current assignment shall also be governed by the unit price fee schedule with is attached hereto as Attachment "B."

B. The Engineer shall begin work upon a written **Notice to Proceed** issued by the City Engineer. The period of service per project shall be determined by the Owner together with the Engineer prior to each Notice to Proceed and shall be specified in the written Notice to Proceed. The period of service shall be determined in accordance with the complexity of the project assigned to the Engineer. The Engineer shall complete the engineering services and/or Design Documents/Reports within the designated time frame for each project stated in the written Notice to Proceed.

#### **V. PAYMENTS TO THE ENGINEER**

##### **A. Payments for Basic Services of the Engineer Under Section I**

##### **1. Compensation of the Engineer:**

a) The Owner shall pay the Engineer for requested services in accordance with the hourly rate schedule, which is attached hereto as Attachment "B" and incorporated herein for all purposes.

b) The total value for the term of the Agreement shall not exceed **ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00)**.

2. The work to be prepared under this Agreement will fall under various funding programs including general revenue, federal grants and bond authorization of various types. The funding source for each individual project will be specified in the written Notice to Proceed issued by the City Engineer. In the event that the funding source for a particular project is a federal grant, the Engineer hereby agrees that all grant assurances will be complied with.

3. Payment on account of said fees for the basic services provided herein, shall be made upon presentation of the Engineer's detailed statement to the Owner, and the Owner's written approval. Payments shall be made on a monthly basis. The Engineer's statement shall set forth the level of each staff member performing work, the number of hours performed, a description of the work performed, together with copies of receipts or other evidence satisfactory to the Owner's representative. The Engineer's failure to furnish such supporting data shall constitute the Engineer's waiver and release of any claim against the Owner with respect to any non-payment of such disputed billing item, pursuant to the set-off provisions set forth herein.

**B. Payments for Additional Services of the Engineer Under Section II**

If authorized by written amendment to this Agreement:

1. The Owner shall pay the Engineer for additional services performed by personnel assigned to the regularly established office of the Engineer at the hourly rates established in Attachment "B" hereof, plus the reasonable actual cost of the reimbursable expenses as hereinafter defined.

2. Reimbursable expenses shall mean the reasonable actual expense of transportation and subsistence of principals and employees while traveling in connection with the Project, field office expenses, toll telephone calls and telegrams, reproduction of reports, and similar Project related items. Such expenses must be authorized in writing by the Owner to be eligible for reimbursement.

3. The Owner shall pay the Engineer at the rate of **TWO HUNDRED SEVENTY-FIVE and NO/100 DOLLARS (\$275.00) per day** or any portion thereof, for serving as an expert witness, plus reasonable out-of-pocket expenses.

4. The Owner shall make payments for additional services monthly upon presentation of the Engineer's detailed statement or invoice and supporting documentation in accordance with Section V. hereof, and the Owner's written approval.

**C. General**

1. The payroll cost of salaries and wages used as a basis for payment under Section V.B.1., shall mean the cost of salaries and wages paid to principals and

employees engaged directly on the Project, including but not limited to social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto.

2. If this Agreement is terminated during the performance of engineering services, the Engineer shall be paid for services performed on the basis of a reasonable estimate of the portion of services completed prior to termination. In the event of any termination, the Engineer shall be paid to the extent services performed by the Engineer are completed and payment for such services is due, including payment for additional services. Any previous payments made to the Engineer shall be credited to the payments due under this Agreement. Such payment to the Engineer upon termination shall be full and final payment to the Engineer and any employees, subcontractors, or independent contractors employed by the Engineer, and the Engineer shall not be entitled to any other claims or damages against the Owner, including but not limited to lost profits, office expenses, or overhead expenses. Any previous payments made to the Engineer shall be credited to the payments due under this agreement.

3. If prior to termination of this Agreement, any work by the Engineer is suspended in whole or in part for more than three (3) months, or abandoned, after written notice from the Owner, the Engineer shall be paid for services performed on account of the Engineer's work prior to receipt of such notice, from the Owner, for termination of the work.

## **VI. GENERAL CONSIDERATIONS**

### **A. Termination**

This Agreement may be terminated without cause for convenience of the Owner by giving **fifteen (15) days written notice**. In the event of failure to perform in accordance with the terms herein, the Owner may terminate this Agreement by giving **seven (7) days written notice**. If this Agreement is so terminated, the Engineer shall be paid as provided herein. The termination of this Agreement by the Owner shall not be construed as a release of any claims that the Owner may be lawfully entitled to assert against the Engineer. The Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Engineer. The Owner may withhold any payment to the Engineer for the purpose of setoff until such time as the exact amount of damages due the Owner from the Engineer is determined.

### **B. Ownership of Documents**

Design documents/reports, studies, tracings and any other recordations prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the Owner prior to payment to the Engineer for work under this Agreement. If this Agreement is terminated at any time for any reason prior to payment to the Engineer for work under this Agreement, all reports, studies, tracings and any other recordations



prepared or obtained under the terms of this Agreement shall upon termination be delivered to and become the property of the Owner prior to payment to the Engineer. Sketches, charts, computations, and all other data prepared for and under this Agreement shall be made available to the Owner upon request and without restriction on their use, or further compensation to the Engineer. The Owner in requiring ownership of the above listed documents hereby releases the Engineer from all responsibility in connection with their use on any project other than their use on this Project.

**C. Insurance**

The Engineer shall secure and maintain at the Engineer's sole expense such Comprehensive Liability, Property Damage Liability, Vehicle Liability and Workers' Compensation Insurance as shall protect the Engineer from workers' compensation claims under applicable state law and from all claims from bodily injury, death, or property damage which may arise from the performance of services under this Agreement. The Engineer shall provide or secure public liability insurance for personal injuries or death, arising out of any one accident or other cause, in a minimum sum of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)** for one person and **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)** for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)** for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claim Act, whichever is greater. The Engineer shall procure and shall maintain at the Engineer's expense Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Engineer, its principals or officers, agents, or employees in the performance of this Agreement.

The Engineer shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to Owner. All policies required by this Agreement, with the exception of Workers' Compensation Insurance and Professional Liability Insurance, shall name the Owner, its officials, servants, agents, and employees as additional insureds. The Engineer shall, prior to the execution of this Agreement, furnish the Owner with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with Owner copies of said policies, if requested by Owner. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to Owner **thirty (30) days** in advance of the effective date thereof and shall show the type, amounts, classes of operation covered, effective dates and dates of expiration of policies.

**D. Successors and Assigns**

This Agreement shall be binding on the Owner, its successors and assigns, and on the Engineer, the Engineer's partners, successors, executors, administrators, legal representatives, and assigns. Neither the Owner nor the Engineer shall assign, sublet, or

transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Owner.

**E. Compliance with Laws**

The Engineer shall comply with all federal, state, and local laws and ordinances applicable to the work covered hereunder.

**F. Change of Legal Status**

In the event that there is a change in the legal status of the entity that has entered into this Agreement with the Owner, including but not limited to the dissolution of a partnership or a corporate entity, the Owner shall have the right to: 1) immediately terminate this Agreement for convenience; or 2) consent to the change in the legal status and continue under this Agreement; or 3) enter into an Agreement with any person, corporation or association that it deems to be qualified to perform the services requested herein with no further legal obligation or liability under this Agreement.

**G. Auditing Records**

Engineer's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Engineer's work for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of 1) Engineer's compliance with contract requirements, and 2) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Engineer's records have been generated from computerized data, Engineer agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled to audit all of the Engineer's records related to this Project, and shall be allowed to interview any of the Engineer's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

**VII. SPECIAL PROVISIONS**

**A. Time of Essence; Liquidated Damages**

***TIME IS OF THE ESSENCE*** in this Agreement. The Engineer agrees to accept and adhere to the schedule established on a per project basis and per the written Notice to

Proceed. Failure of the Engineer to adhere to this schedule without due cause, approved in writing by the City Engineer, shall cause damage to the City which the Engineer agrees to compensate at the rate of **ONE HUNDRED AND NO/10 DOLLARS (\$100.00) per day**, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between the Engineer and the Owner, that the date of beginning and the time for completion as specified in the Agreement of the work to be done hereunder are **ESSENTIAL CONDITIONS** in the Agreement. It is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date to be specified in the **“Notice to Proceed.”**

The Engineer agrees that said work shall be prosecuted regularly, diligently, and uninterrupted as such rate of progress as shall ensure completion thereof within the time specified. It is expressly understood and agreed, by and between the Engineer and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same.

If the Engineer shall neglect, fail, or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Engineer does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in this Agreement, not as a penalty but as liquidated damages for such breach of Agreement as hereinafter set forth, for each and every calendar day that the Engineer shall be in default after the time stipulated in the Agreement for completing the work.

The said amount is fixed and agreed upon by and between the Engineer and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain.

It is further agreed that **TIME IS OF THE ESSENCE** in each of the specifications wherein a definite and certain length of time is fixed for the performance of any act and in every portion of this Agreement. Additionally, time shall be of the essence where under this Agreement any additional time is allowed for the completion of any work. However, when the Owner determines in writing that the Engineer is without fault and the reasons for a time extension are acceptable, the Engineer shall not be charged with liquidated damages or any excess cost.

**B. Equal Employment Opportunity**

In providing services under this Agreement, the Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. The Engineer shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: employment,





## **VIII. COMPLIANCE WITH ALL LAWS - FEDERAL FUNDING REQUIREMENTS**

Engineer, at Engineer's expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Engineer with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Engineer agrees that the following covenants shall apply throughout the performance of this Agreement because federal funds are involved and that, in the event of breach of the above covenant or breach of any of the following covenants, Owner shall have the right to terminate this Agreement.

### **A. Anti-Kickback Rules**

Salaries of Architects, Engineers, draftsmen, technical engineers, technicians and other employees and consultants performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Engineer shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

### **B. Section 3 Clause**

The following provisions are incorporated into this Agreement, as required by 24 CFR 135.20 (b):

1. To the extent that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project be awarded to business concerns, which are located in or owned in substantial part by persons residing in the area of the Project.
2. The parties to this Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of

Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

3. The Engineer shall send to each labor organization, or representative of workers with which the Engineer has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of the Engineer's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Engineer shall include this Section 3 clause in every subcontract for work in connection with the Project and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Engineer shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the construction contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Engineers and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.
6. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

7. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulation may be amended. Engineer shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
8. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination in the performance of this Agreement.

**C. Access to Records**

In accordance with OMB Circular A-102, Attachment "O," Sec. 4h, the Owner, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are directly pertinent to the Owner's Community Development Block Grant Program for the purpose of making audit, examination excerpts, and transcriptions.

**D. Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom.

**E. Davis-Bacon Wages**

In preparation of any cost estimates and project budgets, as described in this Agreement, the Engineer shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by those involved in the project.

**F. Termination for Cancellation of Grant**

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Engineer of the cancellation by certified mail-return receipt requested, whereupon the Engineer shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Engineer will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.



**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

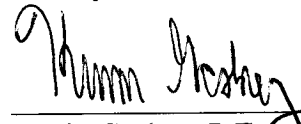
OWNER: THE CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy, Mayor

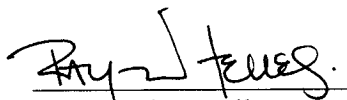
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

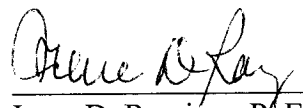
ENGINEER: Kimley-Horn and Associates, Inc.

  
\_\_\_\_\_  
Kevin Gaskey, P.E.  
Senior Vice-President/Principal

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Irene D. Ramirez, P.E.  
Interim City Engineer

**ACKNOWLEDGMENTS**

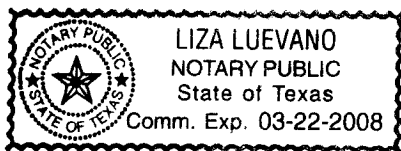
THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
by \_\_\_\_\_, as **Mayor of the City of El Paso, Texas.**

\_\_\_\_\_  
**Notary Public, State of Texas**

THE STATE OF TEXAS   )  
  )  
COUNTY OF El Paso    )

This instrument was acknowledged before me on this 15 day of April, 2004,  
by **Kevin Gaskey, P.E., as Senior Vice-President/Principal of Kimley-Horn and Associates, Inc.**



  
\_\_\_\_\_  
**Notary Public, State of Texas**

# ATTACHMENT "A"

## PROJECT SCOPE

TITLE: Civil Engineering Consulting Services

LOCATION: Citywide

BUDGET: \$1.5 Million/ 2 years

GENERAL DESCRIPTION: This contract will be used for miscellaneous assignments not covered within the scope of a defined project. See attached Scope of Services for details of the type of services covered.

SERVICES REQUIRED:

☒ Investigation

☒ Planning

☒ Soils Investigation

☒ Design

☒ Bidding & Construction

PRODUCTS REQUIRED:

☒ Study / Report

☒ Plans, Specifications, Estimates

GENERAL REQUIREMENTS AND CRITERIA:

1. Design must meet all applicable City Codes and Ordinances.
2. Design must comply with Engineering Department Guidelines.
3. Design must comply with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.

OTHER CONSIDERATIONS:

1. Work to be coordinated with the Engineering Department.
2. This contract will be for a period of two years, with the option to renew for two additional one year terms.

PROJECT SCHEDULE:

Project Schedules to be developed for each assignment as needed.

## Scope of Services

### General Description:

1. Studies and Reports - Engineer shall perform research and database creation to conduct studies and produce reports to include investigations, drawings, sketches, and cost estimates. Reports shall include description of alternatives considered, estimates of construction costs, conclusions and recommendations. This task includes the preparation of drainage studies, master drainage plans, feasibility studies, structural analysis, design analysis and other studies as required.
2. Preparation of plans, specifications and cost estimates for design of street and drainage improvements, other site improvements, drainage improvements and subsurface utility engineering to include records research and field verification.
3. Preparation of plans, specifications and cost estimates for design of buildings, structures and similar construction.
4. Constructibility, Biddability, Operability Reviews and Value Engineering. The Engineer shall provide constructibility, biddability, and operability reviews on proposed construction projects. The review will cover such items as detail and cut omissions and inconsistencies between plans and specifications, vague or ambiguous notes and references and lack of coordination between the drawings of all disciplines involved in the project.
5. Full time Project Representative. The Engineer shall designate and assign a project representative, subject to the approval of the Owner, who will serve as the point of contact during the on-site observation and inspection of the construction work in progress and to ascertain that the work is properly executed in conformance with the drawings and specifications.
6. Review of Shop Drawings, Materials, Fixtures, and Equipment. The Engineer shall review shop drawings and materials submittal and make recommendations for approval or disapproval. Final approval shall be by the Owner.
7. Meetings and Conferences. Periodic meetings shall be held whenever requested by the Owner for discussion of questions and problems relating to the work being performed by the Engineer. The Engineer shall be required to attend and participate in all design conferences pertinent to the work being performed.
8. The Engineer shall appoint a project coordinator or manager to serve as a single point of contact and liaison between the Engineer and the Owner for all work required under this agreement. The project coordinator or manager will be responsible for the complete coordination of all work developed under each assignment. All work will be accomplished with adequate internal controls and review procedures to eliminate conflicts, errors, and omissions, and to insure the technical accuracy of all design information.
9. Other civil engineering functions as may be required by the Owner.

## ATTACHMENT "B"



Kimley-Horn  
and Associates, Inc.

Mr. Gonzalo Cedillos, P.E.  
February 10, 2003  
Page 1

February 10, 2003

Mr Gonzalo Cedillos, P.E.  
Deputy Director for Engineering  
City of El Paso  
Engineering Department  
Two Civic Center Plaza  
El Paso, TX 79901-1196

Re: Civil Engineering Consultant Services:

Dear Sir:

Kimley-Horn and Associates, Inc. is pleased to have been selected by the City of El Paso for the above referenced project. Our firm would be please to meet with the City to further explain any of the following materials that are attached to this proposal. The attachments to this proposal are as follows;

1. Audited Overhead Rate Detail from KPMG
2. Certificate of Insurance
3. Requested Information:
  - a. Complete Company Name and Status
  - b. Complete Name and Title of person who will sign the agreement
  - c. Hourly rate for for providing full time inspection services during construction
  - d. Daily Rate for providing Expert Witness services
  - e. Hourly rates and titles for all personel to be used on this project.

In the event that the State of Texas legislates a sales tax on professional services, the amount of the applicable tax will be added to the appropriate service rate charged by KHA and our subconsultants.

Again, Kimley-Horn and Associates is appreciative to have been selected for this project and looks forward to commencing work. If you have any questions or comments please do not hesitate to call me at (602) 944-5500.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Michael A. Norby P.E.  
Project Manager/Project Engineer  
Associate

cc: File 9134800X  
Reading File

REQUESTED INFORMATION:

1. Complete Company Name and Status.

Kimley - Horn and Associates Incorporated  
Corporate Office located in Cary North Carolina  
3001 Weston Parkway  
Cary, NC 27513  
Phone (919) 677-2000  
Fax (919) 677-2050

2. Complete Name and Title of person who will sign the agreement.

Fred C. Corey P.E.  
Principal / Sr. Vice President

3. Hourly Rate for providing full time inspection services during construction.

Senior Inspector - \$39.00 plus overhead and expenses  
Junior Inspector - \$30.00 plus overhead and expenses

4. Daily rate for providing Expert Witness services.

Expert Witness - Preparation Work - \$225.00 plus expenses  
Expert Witness - Testimony - \$275.00

5. Hourly rates and titles for all personnel to be used on this project.

JOB TITLE	HOURLY RATE
Principal Engineer *	\$ 65.00
Project Manager	\$ 47.00
Professional Engineer	\$ 40.00
Engineer Analyst (EIT)	\$ 29.50
CADD Designer	\$ 31.00
CADD Draftsman	\$ 23.00
Senior Inspector	\$ 39.00
Junior Inspector	\$ 30.00
Clerical	\$ 18.25

\* Project Principal will only be used for Quality Control and Quality Assurance.